

Charles M. Tebbutt, WSBA #47255  
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*Additional Counsel Identified on Signature Page to Plaintiffs' Motion*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR  
RESTORATION OF THE  
ENVIRONMENT, INC., a Washington  
non-profit corporation; FRIENDS OF  
TOPPENISH CREEK, a Washington non-  
profit corporation; *and* CENTER FOR  
FOOD SAFETY, a Washington, D.C. non-  
profit corporation,

Plaintiffs,

v.

AUSTIN JACK DECOSTER, an individual,  
DECOSTER ENTERPRISES, LLC, a  
Delaware limited liability company,  
AGRICUTURAL INVESTMENT-FUND  
II, LLC, a Delaware limited liability  
company, IDAHO AGRI INVESTMENTS,  
LLC, an Idaho limited liability company,  
IDAHO DAIRY HOLDINGS, LLC, an  
Idaho limited liability company, DRY  
CREEK DAIRIES, LLC, an Idaho limited  
liability company, WASHINGTON AGRI  
INVESTMENTS, LLC, a Washington  
limited liability company, WASHINGTON  
DAIRY HOLDINGS, LLC, a Washington  
limited liability company, DBD  
WASHINGTON, LLC, a Washington

Case No. 1:19-CV-3110-TOR

**DECLARATION OF ANDREA K.  
RODGERS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR AWARD  
OF ATTORNEYS' AND EXPERT  
WITNESSES' FEES AND COSTS**

DECLARATION OF ANDREA K. RODGERS IN SUPPORT OF PLAINTIFFS'  
MOTION FOR AWARD OF FEES AND COSTS

1 limited liability company; and SMD, LLC, a  
2 Washington limited liability company,  
3 Defendants.

4 I, Andrea K. Rodgers, hereby declare as follows:

5 1. I am over the age of eighteen and competent to make this declaration.

6 2. Currently I serve as Senior Litigation Attorney for Our Children's  
7 Trust, a non-profit law firm that represents youth seeking to secure their  
8 fundamental rights to a stable climate system. I also maintain my own law practice,  
9 through which I participated in the litigation of this case. I provided limited local  
10 counsel advice on litigation and settlement strategy and review of and feedback on  
11 key filings. My hours are appended to the Declaration of Charles M. Tebbutt filed  
12 herewith.

13 3. I have been licensed to practice law for twenty-one years, since 2002,  
14 first in Arizona and then in the District of Columbia, Oregon and Washington. I  
15 became a member of the bar of Washington in 2007. Currently, I am an active  
16 member of the bars of the State of Washington and Oregon, and am admitted pro  
17 hac vice in pending cases in the states of Montana and Hawai'i. I received a pro  
18 bono distinction from the Washington state bar in 2010, 2011, and 2012.

19 4. I am admitted to practice in the U.S. Supreme Court, the U.S. District  
20 Court for the Eastern and Western Districts of Washington, the U.S. District Court

1 for the District of Oregon, the U.S. District Court for the District of Montana, the  
2 U.S. District Court for the District of Northern California, the U.S. Court of  
3 Appeals for the Ninth Circuit, the U.S. Court of Appeals for the Tenth Circuit, the  
4 Snoqualmie Tribal Court, the Lummi Indian Nation Tribal Court and the  
5 Muckleshoot Tribal Court. I received my undergraduate degree from the  
6 University of California, Santa Barbara in 1998 and my law degree from the  
7 Arizona State University College of Law in 2001.

8         5. At the Arizona State University College of Law, I was awarded the  
9 CALI Excellence for the Future Award for Constitutional Law in the Spring of  
10 1999, a Willard H. Pedrick Scholarship in the Spring of 1999, a Graduate Tuition  
11 Scholarship for the 1999-2000 academic year, the Jennings, Strouss & Salmon  
12 Award for Best Student Note in the Spring of 2001, the Dean's Award in May  
13 2001, and the Pro Bono Outstanding Student Award in May 2001. I served as  
14 Associate Editor (1999-2000), Note & Comment Editor (2000-01) and Co-  
15 Executive Editor for *Jurimetrics: The Journal of Law, Science & Technology*  
16 (Spring 2001). I received Honors for my work on *Jurimetrics* in the Fall of 1999,  
17 Fall of 2000 and the Spring of 2001. I also conducted legal research in the field of  
18 biology and the law while serving as a research assistant for Professor Owen Jones  
19 (Spring 2000) and assisted Professor Lawrence Winer on an *amicus curiae* brief  
20

1 filed in the United States Supreme Court in the case of *United States v. Playboy*  
2 *Entertainment Group, Inc.*, 529 U.S. 803 (2000).

3         6. While a student at the Arizona State University College of Law, I  
4 served as a law clerk for the Arizona Civil Liberties Union (Summer 1999) and as  
5 a Summer Associate for the law firm of Jones, Skelton & Hochuli, P.L.C. in  
6 Phoenix Arizona (Summer 2000). I worked as a Legislative Legal Intern with the  
7 Arizona House of Representatives (Spring 2001), working with the General  
8 Counsel of the Democratic Caucus. While in law school, I was a finalist in the  
9 Berch Moot Court Competition (Spring 1999) and participated in the National  
10 Native American Law Student Association Moot Court Competition (Spring  
11 2001).

12         7. After graduating from the Arizona State University College of Law, I  
13 served for one year as a judicial law clerk for the Honorable John C. Gemmill on  
14 the Arizona Court of Appeals (Spring 2001-Summer 2002). From August 2002-  
15 September 2003, I was an Honor's Attorney with the United States Department of  
16 Transportation in Washington, D.C. While there, I worked for the Federal  
17 Highway Administration's Office of Chief Counsel's Administrative &  
18 Technology Law Division and the Office of the Secretary's General Counsel's  
19 Office of Environmental, Civil Rights & General Law. I also prosecuted  
20 hazardous materials transportation cases for the Research & Special Programs

1 Administration's (now known as the Pipeline Hazardous Materials Safety  
2 Administration) Office of the Chief Counsel, Hazardous Materials Safety,  
3 Research & Technology Law Division. I received two performance awards during  
4 my tenure at U.S. DOT.

5 8. From 2003-2006, I was as a staff attorney with the Western  
6 Environmental Law Center, a nonprofit public interest law firm. While there, I  
7 litigated environmental and Indian law cases in state and federal court, including  
8 cases involving pollution from Concentrated Animal Feeding Operations. From  
9 2006-2010, I served as In-House Legal Counsel for the Snoqualmie Indian Tribe,  
10 where I represented Tribal administrative departments, including the Environment  
11 & Natural Resources Department, on a variety of legal issues, developed the  
12 Snoqualmie Tribal Code and Court system, and represented the Tribe in  
13 Snoqualmie Tribal Court, Washington state courts and in the Ninth Circuit Court  
14 of Appeals in family, child welfare, and environmental matters, including the  
15 Tribe's longstanding efforts to restore natural flows to Snoqualmie Falls, a sacred  
16 site of traditional cultural importance. From 2010-December 2014, I had my own  
17 law firm, practicing in the areas of environmental and Indian law.

18 9. I rejoined the Western Environmental Law Center in 2013, first as a  
19 contract attorney and then, in 2015, as a staff attorney. While at the Western  
20 Environmental Law Center my work focused on reducing pollution from

1 agricultural operations, including Concentrated Animal Feeding Operations, and  
2 protecting instream flows for people and fish. I represented public interest clients  
3 and Indian tribes in environmental litigation and policy matters. From January  
4 2015-December 2016, I supervised law students enrolled in the Environmental  
5 Law Clinic at the University of Oregon School of Law (work that I previously did  
6 while an attorney at the Western Environmental Law Center from 2003-2006).

7 10. In January 2017 I became Senior Litigation Attorney, and a  
8 membership of the Leadership Team, at Our Children's Trust, a non-profit  
9 organization that sponsors and coordinates climate change litigation on behalf of  
10 youth all around the world. I litigate primarily in state and federal courts, and also  
11 support attorneys in other countries in constitutional climate change cases.

12 11. I have spoken as a panelist on dozens of Continuing Legal Education  
13 seminars for attorneys, judges, students, policy makers, scientists, and citizens  
14 around the world, and am frequently invited to speak publicly about my work in a  
15 variety of different fora, nationally and internationally.

16 12. I have published several articles in the areas of constitutional and  
17 environmental law, including: Andrea Rodgers & Kelsey Dunn, *The Need for*  
18 *Science-Based Remedies to Respond to Young People's Climate Distress*, a  
19 Chapter in *Climate Change & Youth Mental Health: Multidisciplinary*  
20 perspectives, Elizabeth Haase, MD, Kelsey Hudson, PhD, co-editors, Cambridge

1 Univ. Press (forthcoming 2023); Andrea K. Rodgers, Lauren Sancken, Jennifer  
2 Marlow, *The Injustice of 1.5 °-2 °C: The Need for A Scientifically Based Standard*  
3 *of Fundamental Rights Protection in Constitutional Climate Change Cases*, Va.  
4 Env'tl. L.J. (October 2022) (cited by Hawai'i Supreme Court Justice Mike Wilson  
5 in his concurring opinion in *In re: Haw. Elec. Light Co.*, 526 P.3d 329 (Haw.  
6 2023)); Andrea K. Rodgers, Julia Olson & Eric Laschever, *Climate Justice and the*  
7 *Public Trust: The Plaintiff's Perspective*, Vol. 36, No. 3, ABA Journal of Natural  
8 Resources & Environment (Winter 2022); Paul Rink, Andrea K. Rodgers, & Philip  
9 Gregory, *Children, Climate and Constitutional Rights: Juliana v. United States*, 21  
10 Energy L. Rep. 334 (Nov.-Dec. 2021); Andrea K. Rodgers, *Creative Legal*  
11 *Approaches to Protect Youth's Constitutional Rights in the Face of Climate*  
12 *Change*, 60 UNM Natural Resources Journal 289 (Summer 2020); *Atmospheric*  
13 *Trust Litigation in Washington State: Advocating For A Constitutional Right To A*  
14 *Stable Climate For The Young & Future Generations*, 31 Australian Env't. Rev.  
15 268-271 (2016); *Agricultural Pollution in Puget Sound: Inspiration to Change*  
16 *Washington's Reliance on Voluntary Incentive Programs to Save Salmon*, Western  
17 Environmental Law Center (April 2016); and *The Revival of Climate Change*  
18 *Science in U.S. Courts*, Wash. J. Env'tl. Law & Policy, Ocean Acidification:  
19 Understanding the Other Climate Crisis (2016).

1           13. Through my legal experience in law school and in my more than  
2 twenty years of experience as a practicing attorney, I have developed distinctive  
3 knowledge and skills related to the specialized practice area of federal  
4 environmental litigation.

5           14. I have prosecuted environmental cases in federal courts including the  
6 U.S. District Court for the District of Oregon, the U.S. District Court for the  
7 Northern District of California, the U.S. District for the District of Montana, the  
8 U.S. District Court for the Western District of Washington, the U.S. District Court  
9 for the Eastern District of Washington, and the U.S. Court of Appeals for the Ninth  
10 Circuit. I have prosecuted state environmental cases in Montana state court,  
11 Hawai'i state court, Florida state court, King County Superior Court, Thurston  
12 County Superior Court, the Washington Court of Appeals, and before the Pollution  
13 Control Hearings Board in Lacey, Washington.

14           15. Some of the federal cases I have litigated include: *Juliana v. United*  
15 *States*, 947 F.3d 1159 (9th Cir. 2020) (constitutional climate change case on behalf  
16 of twenty-one youth against the executive branch of U.S. government); *Friends of*  
17 *Toppenish Creek v. Indian Health Service*, No. 1:16-CV-03013-SAB (FOIA action  
18 against Indian Health Service resolved by stipulation of settlement and dismissal)  
19 (E.D. Wa. February 27, 2017); *Community Association for Restoration of the*  
20 *Environment v. Env'tl. Prot. Agency*, 2014 WL 3870168 (E.D. Wa. Aug. 6, 2014)



(FOIA action against U.S. EPA); *Community Association for Restoration of the Environment v. Nelson Faria Dairy*, 2011 WL 6934707, E.D. Wash. December 30, 2011 (Memorandum of Decision) (finding a Concentrated Animal Feeding Operation has “caused or significantly contributed to the excessive nitrate contamination of the local groundwater.”); *Snoqualmie Indian Tribe v. Federal Energy Regulatory Comm’n*, 545 F.3d 1207 (9th Cir. 2008) (appeal of FERC license for Snoqualmie Falls Hydroelectric Project on grounds that the license violates the Federal Power Act and Religious Freedom & Restoration Act); *Or. Natural Res. Council v. U.S. Forest Serv.*, 445 F. Supp. 2d 1211 (D. Or. 2006); *American Forest Resources Council v. Conroy*, 2005 WL 771577 (D. Or. 2005); *Envtl. Prot. Info. Ctr. v. U.S. Fish & Wildlife Serv.*, 2005 WL 3021939 (N.D. Cal. 2005) (challenge to a Habitat Conservation Plan under the Endangered Species Act); *American Whitewater v. Electron Hydro LLC*, No. 2:16-cv-00047-JCC (Endangered Species Act section 9 take case against hydroelectric project) (W.D. Wash. filed April 4, 2016).

16. Some of the state environmental cases I have litigated include: *Held, et al. v. State of Montana, et al.*, No. CDV-2020-307 (MT First Judicial Dist. Ct., Lewis & Clark County) (Findings of Fact, Conclusions of Law and Order) (August 14, 2023); *Navahine, et al. v. State of Hawai’i, et al.*, No. 1CCV-22-0000631 (Hawai’i Circuit Court) (Order Denying Defendants’ Motion to Dismiss) (April 19,

2023); *Wash. State Dairy Fed'n, et al. v. Washington State Dep't of Ecology*, 490 P.3d 290 (Wash. Ct. App. 2021); *Reynolds, et al. v. State of Florida*, (Fla. 1<sup>st</sup> DCA PCA) (May 18, 2021); *Aji P., et al. v. State of Washington*, 480 P.3d 438 (Wash. Ct. App. 2021); *Aji P., et al. v. State of Washington*, No. 99564-8 (Wash. Sup. Ct.) (Order Denying Review) (Oct. 6, 2021); *Foster et al v. Ecology*, King County Superior Court No. 14-2-25295-1 SEA (2014-2017) (appeal of Ecology's denial of petition for rulemaking seeking regulation of greenhouse gas emissions as a means to address climate change and securing the Nation's first court order requiring an agency to cap and regulate greenhouse gas emissions to protect the rights of young people); *Ctr. for Env'tl. Law & Policy, et al. v. Ecology, et al.*, 196 Wn.App. 360, 383 P.3d 608 (2016) (appeal of water right for Enloe Hydroelectric Project); *Ctr. for Env'tl. Law & Policy v. Ecology*, Thurston County Superior Court No. 16-2-02161-34 (filed May 24, 2016) (appeal of Spokane River Instream Flow Rule); *Ctr. for Env'tl. Law & Policy v. Ecology, et al.*, PCHB No. 13-117 (Order on Motions for Summary Judgment) (June 24, 2014) (appeal of water right for Enloe Hydroelectric Project); *Ctr. for Env'tl. Law & Policy v. Ecology, et al.*, PCHB No. 12-082 (Findings of Fact, Conclusions of Law & Final Order) (Aug. 30, 2013) (appeal of Clean Water Act 401 Certification for Enloe Hydroelectric Project for failing to consider and protect aesthetic and recreational values); *Svitak et al. v. State of Washington, et al.*, King County Superior Court No. 11-2-16009-4 SEA

1 (Wa. Ct. App.) (Feb. 29, 2012) (declaratory judgment action against the State of  
2 Washington for violations of the Public Trust Doctrine for failing to prevent  
3 substantial impairment to public trust resources due to climate change);  
4 *Snoqualmie Indian Tribe v. Ecology*, PCHB No. 03-156 (April 7, 2004) (appeal of  
5 Clean Water Act 401 Certification for Snoqualmie Falls Hydroelectric Project).

6 17. My total time for this case through September 10, 2023 is 12.5 hours.  
7 A detailed breakdown of my time is attached as Exhibit 1 to the declaration of  
8 Charles M. Tebbutt. I am requesting that the Court award me a rate of \$590 per  
9 hour, for a total award of \$7,375, as well as time for assisting with the fee petition,  
10 to be submitted as a supplemental request.

11 I swear under penalty of perjury that the foregoing is true and correct to the  
12 best of my knowledge.

13 DATED: September 15, 2023

/s/ Andrea K. Rodgers

14 Andrea K. Rodgers  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2023, I electronically filed the foregoing document on the Court's CM/ECF filing system, which will automatically serve the following counsel of record:

Gary H. Baise	gbaise@ofwlaw.com
Jay Carroll	jcarroll@hnw.law
Amy van Saun	avansaun@centerforfoodsafety.org
Toby Marshall	tmarshall@terrellmarshall.com
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Andrea K. Rodgers	andrearodgers42@gmail.com
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/s/ Jonathan D. Frohnmayer  
Jonathan D. Frohnmayer  
Law Offices of Charles M. Tebbutt